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Motor Vehicle Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement

Name.....

Address.....

Telephone.....

I _____ ("Driver") hereby enter into this Agreement in consideration of my ability and permission to ride and/or use any motorbikes, quad bikes or dune buggies ("Motor Vehicle") owned or operated by **A Kimberley Adventure Pty Ltd ACN 623 286 457** ("aKa").

Signed of Driver..... Date.....

Credit Card Information			
Card Type:	<input type="checkbox"/> MasterCard	<input type="checkbox"/> VISA	<input type="checkbox"/> Discover <input type="checkbox"/> AMEX
	<input type="checkbox"/> Other		
Cardholder Name (as shown on card):			
Card Number:			
Expiration Date (mm/yy):			
Cardholder Signature:			

1. Important Notice

- 1.1. References in this Motor Vehicle release and waiver of liability, assumption of risk and indemnity agreement to your "trips" are references to the adventure package you have booked with aKa. References to "excursions" are references to short trips or adventures included or available as part of your trip.
- 1.2. By signing this Agreement you are giving up certain legal rights including, but not limited to, the right to recover damages in case of injury, death, or property damage arising out of your driving and/or use of aKa's Motor Vehicle's and/or participation in Motor Vehicle related activities in any trips and/or excursions with aKa including, but not limited to, injury, death, or property damage arising out of the negligence of you and/or aKa. Accordingly, read this Agreement carefully before signing it. Your signature indicates your understanding of and consent to its terms.

2. Purpose of Agreement

- 2.1. Driver wishes to drive and handle one or more Motor Vehicles owned by aKa for driving with respect to any trips and/or excursions. In consideration for aKa permitting Driver to drive and handle aKa's Motor Vehicles Driver agrees to release and indemnify aKa from all claims as set forth in this Agreement.

3. Special Notes about Motor Vehicles and Motor Vehicle Related Activities

- 3.1. aKa makes no representation or warranty about the suitability of aKa's Motor Vehicles for Driver. Driver agrees to assume the risk that aKa's Motor Vehicles may not be suitable or safe for the Driver to Drive and handle and that the performance and Motor Vehicle related activities in any trips and/or excursions involved presents an inherent risk. Driver recognises the inherent risks involved in driving with respect to any trips and/or excursions with Motor Vehicles.

4. Safe Driving Attire

- 4.1. Driver agrees to wear appropriate clothing for Driving when driving or handling aKa's Motor Vehicles, which aKa has no duty and/or obligation to provide.

5. Driver's Representations and Warranties

- 5.1. Driver makes each of the following representations and warranties on behalf of Driver and Driver's guardians, heirs and assigns (collectively, the "Driver Parties"):
 - a) Driver has the requisite authority to enter into this Agreement upon behalf of the Driver Parties;
 - b) In the event that Driver is incapacitated at any time during Driver's trips and/or excursions due to aKa's Motor Vehicles Driver grants aKa the full authority to make all decisions on behalf of Driver including, but not limited to, medical care, and Driver agrees to discharge aKa's liability for any and all injuries or death to Driver that may result from such decisions made by aKa;
 - c) Driver does not have any physical or mental conditions that may prevent Driver from safely participating in Motor Vehicle related activities in any trips and/or excursions;
 - d) Driver is experienced in the activity of driving Motor Vehicles and has sufficient skill to ride a Motor Vehicle during any trips and/or excursions with aKa; and
 - e) Driver holds a valid Australian drivers' licence and will at all times adhere to Western Australian road rules;
 - f) Driver will at all times be free from the influence of drugs or alcohol whilst driving and handling aKa's Motor Vehicles;
 - g) Driver will not exceed the safety speed limit whilst driving and handling aKa's Motor Vehicles;
 - h) Driver will at all times, whilst driving and handling aKa's Motor Vehicles, follow instructions issued by aKa and/or aKa's employees, agents or contractors; and

- i) Driver will at all times, whilst driving and handling aKa's Motor Vehicles, exercise caution including, but not limited to, maintain a safe distance between motor vehicles.

6. Risk of Injury or Death to Driver

- 6.1. Driver understands that Motor Vehicle related activities in any trips and/or excursions are inherently dangerous and expressly assumes the risks associated with driving and handling aKa's Motor Vehicles.
- 6.2. Driver understands that Motor Vehicles are inherently unpredictable vehicles and even the most up to date-maintained Motor Vehicle may experience mechanical failure of vital safety equipment such as brakes or tyres.
- 6.3. Driver understand that in the activity of driving Motor Vehicles in any trips and/or excursions that it may involve driving on dangerous terrain including, but not limited to, holes, rocks, uneven portions or otherwise unpredictable terrain.
- 6.4. Driver expressly assumes all risks of engaging in Motor Vehicle related activities in any trips and/or excursions, including the risk that aKa and/or aKa's guests, employees, agents or contractors (collectively, the "aKa Parties") may be negligent.
- 6.5. Driver agrees upon behalf of the Driver Parties not to sue the aKa Parties or otherwise make a claim against such parties in connection with any and all injuries or death.

7. Driver's Indemnification Agreement

- 7.1. Driver agrees to defend, indemnify and discharge the aKa Parties of all and any liability against all claims, demands, and causes of action, including court costs and legal fees, directly or indirectly arising from any action or other proceedings brought by or prosecuted for the benefit of any of the Driver Parties or brought by others in connection with any action or inaction taken by the Driver.

8. Waiver of Unknown Claims

- 8.1. Upon behalf of the Driver Parties, Driver expressly waives any rights that the Driver Parties might otherwise have with regard to unknown claims. For the purpose of this section, "claims" shall include all actions, claims and grievances, whether actual or potential, known or unknown and specifically but not exclusively, all claims arising in connection with this Agreement.

9. Damage to Motor Vehicles

- 9.1. Driver agrees to be responsible for all and any damage to aKa's Motor Vehicle, whether caused directly or indirectly.
- 9.2. Driver will be liable for any and all repairs to aKa's Motor Vehicles. In the event the damaged Motor Vehicles are not repairable, Driver will be liable in full for payment of aKa's Motor Vehicles at the time immediately before the damaged occurred.

10. Credit Card Authorisation

- 10.1. Driver agrees to provide a credit card authorisation. The Authorisation may be used to cover incidental items including, but not limited to, damage to Motor Vehicles (per clause 9) during your trip.

11. Cultural Respect and Code of Conduct

- 11.1. The Driver agrees to the following rules of cultural respect and code of conduct as follows:
 - a) Remember when visiting aboriginal communities to respect the privacy and wishes of the people who live on that community;
 - b) Respect the indigenous people by not photographing them without permission;
 - c) Respect sacred sites by not entering or photographing them;
 - d) Under no circumstances are you to take photographs, live recordings, broadcasts of any culturally significant Aboriginal sites. Any images or recordings that are inadvertently taken must be erased immediately;
 - e) There may be incidents where there has been a death, incident or cultural ceremony on the community, and entry to the community may not be granted – use extra sensitivity in communities at these times;
 - f) Direct eye contact with Aboriginal people is not always culturally appropriate;
 - g) You are welcome to ask any questions you may have in regard to the Aboriginal people on the community, remembering that cultural sensitivities may prevent some questions being answered directly;
 - h) If you are talking to Aboriginal people, recognise that they may communicate differently to non-indigenous people – English may be a second or third language;
 - i) Do not enter areas of the community without permission;
 - j) The sites you are taken to during the trip are culturally significant Aboriginal sites and as such access to all sites are on strict licence. Accordingly, you must not return to any sites shown to you by aKa, nor attempt to record the location of any sites shown to you by aKa. In the event that aKa is informed of any unauthorised visit, aKa will report you and your actions to the relevant authorities; and
 - k) Do not remove rocks or other objects from Aboriginal land or waters without the permission of traditional owners. Disturbing cultural sites is also prohibited by Australia law.

12. Entire Agreement

- 12.1. This Agreement contains the entire Agreement among the parties. Any modification or additions must be in writing and signed by all parties to this Agreement. No oral modifications will be considered part of the Agreement unless reduced to writing and signed by all parties.

13. Governing Law and Venue

- 13.1. This Agreement and any dispute arising out of the subject matter of this Agreement is governed by the laws of the State of Western Australia.
- 13.2. Both parties submit to the exclusive jurisdiction of the courts of that State and the courts of appeal from them, in respect to any proceeding arising out of the subject matter of this Agreement.

14. Severability

- 14.1. If any provision of this Agreement or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application. In lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible and be legal, valid and enforceable.